SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 16, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 16, 2024, at 1:00 p.m., in Council Chambers, with the following present:

Michael H. Vincent
John L. Rieley
Cynthia C. Green
Douglas B. Hudson
Mark G. Schaeffer
Vice President
Councilwoman
Councilman
Councilman

Todd F. Lawson
Gina Jennings
J. Everett Moore, Jr.

County Administrator
Finance Director
County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

Call to

Order Mr. Vincent called the meeting to order.

M 190 24 Approve Agenda A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Agenda, as presented.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Minutes The minutes from April 9, 2024, were approved by consensus.

Correspond. Mr. Moore reported that there was no correspondence.

Comments There were no public comments.

Proclamation/Fair Housing Month A Proclamation entitled "PROCLAIMING THE MONTH OF APRIL AS FAIR HOUSING MONTH IN SUSSEX COUNTY" was presented to members from the Sussex County Association of Realtors, Ms. Tyesia Dupont-Palmer, Community Development Program Specialist I and Mrs.

Brandy Nauman, Community Development & Housing Director.

Adminis-

Mr. Lawson read the following information in his Administrator's Report:

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Report 1. <u>Projects Receiving Substantial Completion</u>

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Coastal Tide (aka

Administrator's Report (continued) Arbors of Cottage Dale) effective March 28th; Windswept at Lewes – Phase 4A (Construction Record) effective April 2; Windswept at Lewes – Pump Station and Forcemain effective April 2nd; Millville By The Sea – Seagull Village (FKA Millville By The Sea – Village 2) – Phase 2 effective April 4th; Patriots Glen – Phase 1C (Construction Record) effective April 5th and Milos Haven – Phase 2 (Construction Record) effective April 5th.

[Attachments to the Administrator's Report are not attached to the minutes.]

Old Business/ CU2365

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS" filed on behalf of Frankford Community Energy Initiative II, LLC.

Mr. Moore reported that there was a litigation involving this application and on March 20, 2024, there was stipulated order of judgment. Under that order of judgment, it indicated that this land use application would come back to the County Council for reconsideration and that the Council would reconsider and render a new decision on this matter within 30 days of the date of this stipulation. In addition, the stipulation stated that the County shall base its decision solely upon the existing record including Planning & Zoning Commission existing unanimously recommendation for approval and shall not remand the matter to the Planning Commission or consider any other testimony or evidence.

The item was last considered by the County Council at its meeting on August 29, 2023.

M 191 24 Adopt Ordinance No. 3000/ CU2365 A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Ordinance No. 3000 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning & Zoning Commission as follows:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.

M 191 24 Adopt Ordinance No. 3000/ CU2365 (continued)

- 2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 17.68 acres of a larger 42.95-acre tract.
- 3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
- 4. Although this Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar farms, this proposed conditional use complies with the buffer and setback requirements of that Ordinance.
- 5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.
- 6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
- 7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
- 8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
- 9. There will be a buffer of planted vegetation along the boundary of this site facing Route 113 to screen it from view from the highway. In addition, there will be a 100-foot-wide cleared area beyond the perimeter fence that will remain in a natural state once trees are removed from this open space to allow the solar panels to function.
- 10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
- 11. There was no opposition to this Application.
- 12. This recommendation is subject to the following conditions:
 - a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use. The site plan shall also clearly show the forested areas within the entire property that will remain undisturbed.
 - c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - e. The site shall be secured by gated fencing with interwoven screening with a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.

M 191 24 Adopt Ordinance No. 3000/ CU2365 (continued)

- f. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- i. There shall be a 25-foot-wide buffer of planted vegetation along the boundary of this site facing Route 113. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.
- j. In addition, there shall be a 100-foot-wide cleared area around the fenced perimeter of the site.
- k. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds areavailable for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- 1. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Absent; Mr. Rieley, Yea;

Mr. Vincent, Yea

Grant

Request Mrs. Jennings presented a grant request for Council's consideration.

M 192 24 Nicmar Youth Connection A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Nicmar Youth Connection Enterprises, LLC for their performing arts gala.

Enterprises, Inc.

Motion Adopted: 5 Yeas

Vote by Roll Call:

Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Proposed Ordinance Introductions Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.72 ACRES MORE OR LESS" filed on behalf of Justice Boyz Properties, LLC.

Mrs. Green introduced a Proposed Ordinance entitled "AN ORDINANCE

Proposed Ordinance Introductions (continued) TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE AND AGRICULTURAL EDUCATION CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 70 ACRES, MORE OR LESS" filed on behalf of Jody Vasey.

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS" filed on behalf of Bethany Court Ventures, LLC.

Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS" filed on behalf of Bruce Sentman, Jr.

The Proposed Ordinances will be advertised for a Public Hearing.

CC Member Comments

There were no Council Member comments.

M 193 24 Go Into Executive Session At 1:11 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to go into Executive Session for the purpose of discussing matters related to land acquisition.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Executive Session

At 1:15 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to land acquisition. The Executive Session concluded at 1:55 p.m.

M 194 24 Reconvene At 2:00 p.m., a Motion was made by Mr. Hudson, seconded Mrs. Green to come out of Executive Session back into Regular Session.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Absent;

Mr. Vincent, Yea

M 195 24 Authorize Parcel 2024-B

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to authorize the County Administrator to negotiate, enter into a contract and close on parcel 2024-B.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Absent;

Mr. Vincent, Yea

Public Hearing/ Leeward Chase into SCUSSD A Public Hearing was held for the Leeward Chase Annexation of the Sussex County Unified Sanitary Sewer District (Airpark Area).

John Ashman, Director of Utility Planning & Design Review reported that County Council granted permission to prepare and post notices on January 23, 2024, for an expansion. The Engineering Department received a request from Solutions IPEM on behalf of their client Leeward Chase DE, LLC the owners/developers of a project known as Leeward Chase for parcels 135-15.00-98.00 & 98.01, otherwise known as Moore's Meadow Farm. The project is proposed at 106.00 units and will be responsible for System Connection Charges at the time of connection. The Engineering Department added to the County website, posted notices on March 6, 2024, and advertised the week of April 3rd and 10th. To date, there has been no correspondence either in support or opposition to this proposed annexation.

There were no public comments.

The Public Hearing and public record were closed.

M 196 24 Adopt Resolution No. R 008 24/Leeward Chase A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Resolution No. R 008 24 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) DELAWARE COASTAL AIRPORT AREA, TO INCLUDE THE LEEWARD CHASE SUBDIVISION AREA, ON THE SOUTH SIDE OF LEWES-GEORGETOWN HIGHWAY LOCATED IN THE GEORGETOWN HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Public Hearing/ A Public Hearing was held for the Bosch Berries annexation of the Sussex County Unified Sanitary Sewer District (Western Sussex Area).

Bosch Berries into SCUSSD John Ashman, Director of Utility Planning & Design Review reported that County Council granted permission to prepare and post notices on February 20, 2024, for an expansion of the Sussex County Unified Sanitary Sewer District (Western Sussex Area). The Engineering Department received a request from Davis, Bown & Friedel, Inc. (DBF) on behalf of their client Tijmen & Wouter Van Den Bosch the owners/developers of a project known as Bosch Berries for parcel 131-6.00-1.00.

The parcel is zoned AR-1, Agricultural Residential and adjacent to the existing town boundary and the Sussex County Unified Sanitary Sewer District. The project will be required to annex into the Town of Bridgeville. The project will be responsible for System Connection Charges in place at the time of connection. The Engineering Department added to the County website, posted notices on March 19, 2024, and advertised the week of March 27th and April 3rd. To date, there has been no correspondence either in support or opposition to this proposed annexation.

There were no public comments.

The Public Hearing and public record were closed.

M 197 24 Adopt Resolution No. R 009 24/Bosch Berries A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Resolution No. R 009 24 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCEL 131-6.00-1.00 ON THE WEST SIDE OF ADAMS ROAD. THE PARCEL IS LOCATED IN THE NORTHWEST FORK HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Rules Mr. Moore read the rules and procedures for public hearings.

Public Hearing/ CU2413 A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR VENUE FOR SEASONAL VENDORS AND SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.84 ACRES MORE OR LESS" (property lying on the north side of Line Road [Rt. 54] and the east side of Old Stage Road

Public Hearing/ CU2413 (continued) [S.C.R. 68], at the intersection of Line Road [Rt. 54] and Old Stage Road [S.C.R. 68]) (911 Address: 38397 Old Stage Road, Delmar) (Tax Map Parcel: 532-20.00-107.01) filed on behalf of Blue Hen Rental Company, LLC.

The Planning & Zoning Commission held a Public Hearing on the application on February 21, 2024. At the meeting of March 20, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 10 recommended conditions as outlined.

The Council found that Mr. Chad Lingenfelder, Esq., from the Smith Firm spoke on behalf of the Applicant, Blue Hen Rental Company, LLC; that also present was Mr. Doug Marshall, a managing member of Blue Hen Rental Company, LLC. Mr. Lingenfelder stated that the property is located just outside the Delmar town limits on Line Road and Stage Road; that the applicant requested that DelDOT use the current entrance that is located on Old State Road; that Mr. Marshall has been involved with Representative Dukes and other State legislators and DelDOT regarding some concerns he and the community has had relating to Route 54 and the intersection; that Mr. Marshall and Representative Dukes have been involved about lowering the speed limit on that road; that there is a hope to put in a round about there to relieve some of the traffic congestion; that Mr. Marshall is in support of the entrance being on Old Stage Road; that another recommendation is that there be no parking on Old Stage Road; that Mr. Marshall supports P&Z placing signs on Old Stage Road to inform the community and vendors that there will be parking; that the vision of this area is to have it as a year-round open space; that the hope is for a farmers market, outdoor venue services and seasonal vendors; that Mr. Marshall is open to allowing the year round provision to be enacted; that he believes that the Town of Delmar concerns related to parking have and will be addressed; that Mr. Marshall was involved in getting DelDOT to do a traffic study on Line Road; that the speed limit is being reduced from 50 mph to 35 mph.

Mr. Marshall stated that he lives in the area; that he developed a nearby community, Yorkshire Estates that was supposed to be 250 homes; that he did not think that was the right fit for the town so he eliminated about 80 lots; that he also did Heron Ponds that was supposed to be 301 homes and he eliminated 200 homes; that he thought it was too condense for a little town so he eliminated those homes that were previously approved; that he lives here and cares about the Town; that he has been working to get his licensing.

Mr. Hudson questioned the approval of live music. Mr. Lingenfelder stated that there was a concern that this would be like a Hudson Fields or Schellville; that in such a small condense area, that is not the applicant's position; that the intent is do events with music on a smaller scale; that it is not intended to do a for pay and buy a ticket type of events.

There were no public comments.

The Public Hearing and public record were closed.

M 198 24 Defer Action/ CU2413 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR VENUE FOR SEASONAL VENDORS AND SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.84 ACRES MORE OR LESS".

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Public Hearing/ CU2445 A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRUCK PARKING, STORAGE, & MAINTENANCE AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.06 ACRES, MORE OR LESS" (property lying on the west side of Old Hickory Road [S.C.R. 497], at the intersection of Old Hickory Road [S.C.R. 497] and White Pines Lane, approximately 250 ft. northwest of Sharptown Road [Rt. 24]) (911 Address: 33124, 7496 & 7506 Old Hickory Road, Laurel) (Tax Map Parcel: 432-11.00-40.03) filed on behalf of Deihm's Trucking, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on February 21, 2024. At the meeting of March 20, 2024, the Planning & Zoning Commission recommended approval of the application for the 5 reasons stated and subject to the 13 recommended conditions as outlined.

The Council found that Mr. Bryan Deihm spoke on behalf of his application. Mr. Deihm stated he is looking for a conditional use for his property as he runs a trash disposal company and needs to store his trucks and dumpsters here: that there is a single wide trailer on the site that is used as an office; that he has been there for a little over a year; that there were four letters from surrounding neighbors that were submitted in support; that there is really no loud noise; that there is a garage that he may occasionally do an oil change; that most of his shop work or maintenance is contracted out; that he has 7 employees; that he owns six trucks that run 3 daily and one is a roll off that runs as needed; that he has two separate trash trucks; that he has been operating for 7

Public Hearing/ CU2445 (continued) years; that the business is growing at a decent rate; that they are a small company that is trying to give back to Laurel; that when they purchased the property the realtor told them that there was a Conditional Use on the property and that they would need to reapply because once the conditions change (i.e.; sale or business change) it is required that a new conditional use application is applied for if they want to continue operating outside of the means of the current zone; that when they bought the property their real estate agent told them that the whole property was zoned commercial; that there are two driveways that can be used to access the property; that the property consists of three addresses, one which is 33124 Old Hickory Lane is a rental property, and the other two in the back are where they are operating the Diehm's Disposal Company; that it is signed on the plot plan by the neighboring property owner for a creation of an 30-foot easement; that he is willing to plant a shrubbery buffer around the whole perimeter of the property if necessary.

There were no public comments.

The Public Hearing and public record were closed.

M 199 24 Defer Action/ CU2445 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRUCK PARKING, STORAGE, & MAINTENANCE AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.06 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

M 200 24 Adjourn A Motion was made by Mr. Rieley, seconded by Mr. Hudson to adjourn at 2:39 p.m.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Vincent, Yea

Respectfully submitted,

Tracy N. Torbert Clerk of the Council

{An audio recording of this meeting is available on the County's website.}